

**REMARKS:**

*Amendment to the Specification:*

Upon review of the application, the undersigned observed that the original application omitted a "Related Applications" section claiming priority to Provisional Patent Application Serial No. 60/128,566 filed April 9, 1999. 37 C.F.R. § 1.78(a)(5) permits amendment of a nonprovisional application to include a claim of priority. Fortunately, the recently imposed 4-month/16-month deadline for making such an amendment does not apply because the application was filed before November 29, 2000. See 37 C.F.R. § 1.78(a)(5)(ii)(A).

*Status of claims:*

The Amendments filed on April 23, 2004, were entered for purposes of appeal. Additional amendments have been made as set forth in the listing of the claims. Claims 1 and 2 have been amended to explicitly provide that the smart card is portable and that the processor that does the image comparison is housed in a physical structure separate from said smart card. Also, claim 3 has been amended to state that the processor that does the image comparison is housed in a physical structure separate from the portable identification device. None of these amendments add new matter. The specification describes a computer 113 that "can be configured as a standard PC" (page 8, lines 21-22) which is a physically separate structure. The figures also depict the computer 113 as physically separate from the smart card 127. And the specification states that the smart-card is "removably associated with docking station 118" (page 9, lines 6-7) and is described for use at docking stations located at point of sale terminals and the like (page 12, lines 3-5), which means that it is portable.

Three new claims (12-14) have been added. Claim 12 is supported by page 6, lines 18-23. Claim 13 is supported by page 6, lines 7-14. Claim 14 is supported by page 21, lines 14-18 and page 23, line 19 through page 24, line 2.

*Argument*

Applicants repeat and incorporate by reference the arguments set forth in their April 23, 2004 Response to the Final Office Action. In an effort to overcome the arguments made in that Final Office Action, as well as the Examiner's Advisory Action, Applicants attach an section 132 Affidavit of Dave Tumey. The Examiner is respectfully asked to consider the evidence set forth in that Affidavit,<sup>1</sup> together with the arguments made in the April 23, 2004, Response.

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<sup>1</sup> It has been the undersigned's experience that the PTO routinely accepts section 132 affidavits filed after the first office action, particularly where an RCE is filed. But assuming that there is some question regarding whether the attached affidavit to be timely and seasonably filed under MPEP 716.01, Applicants would note that an affidavit was not earlier presented because new claims 3-11 were not filed until the

In addition, it should be noted that an additional unexpected advantage of the Applicants' invention is noted on page 6 of the Application. By placing a camera in the smart card, the user's very act of inserting the card into a properly designed docking station will naturally cause the user to look in the right direction, enabling the system to acquire a good quality facial image of the human user "without requiring attentive action by the human user." Page 6, lines 13-14.

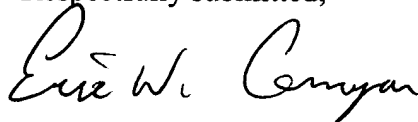
In light of this evidence, Applicants respectfully ask that the section 103 rejections be withdrawn.

### Conclusion

Believing that all things raised in the Examiner's February 24, 2004, Office Action and May 12, 2004, Advisory Action have been addressed, the undersigned respectfully requests withdrawal of the rejections of claims 1-11 and allowance and issuance of the application.

The Commissioner is authorized to deduct any fees that may be required from Eric W. Cernyar, P.C.'s deposit account no. 502906.

Respectfully submitted,



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response just before the final office action. Applicants reasonably believed that the need for secondary evidence was rendered moot in light of the arguments it made against the earlier prior art rejections (which had not yet been fully considered until the Advisory Action). And the undersigned did not believe it to be appropriate to file an affidavit (given the amount of time required to consider it) in response to a final rejection without giving the PTO the benefit of and fee associated with a RCE.